IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 1192 OF 1989

Rayat Shikshan Sanstha,
a registered society registered
under the Societies Registration
Act and Bombay Public Trust Act,
1950 having its office at Rayat
Karyalaya Satara, Dist. Satara,
through its Secretary. ... Appellant.

Versus.

1. The District Collector, Pune.
2. The Special Land Acquisition
Officer (XIV), Pune Dist. Pune. ... Respondents.

Shri R.V.More for the Appellant.

Shri K.K.Tated, A.G.P. for Respondents.

CORAM : ABHAY S.OKA, J.

DATED : 3rd April, 2006.

ORAL JUDGMENT.

1. Heard the learned Advocate for the Appellant and the learned A.G.P. for the Respondents. The Appeal is preferred by the original Claimant in a reference under section 18 of the Land Acquisition Act, 1894 (hereinafter referred to as "the said Act"). The Reference Court has rejected the claim made by the Claimant for enhancement in the market value. However, the Reference Court has awarded the benefit of solatium

under section 23(2) and interest under section 23(1-A) of the said Act.

2. The learned Advocate for the Appellant submitted that the compensation awarded under the Award under section 11 of the said Act is extremely on the lower side. He submitted that the Appellant had produced extracts issued under section 57 of the Indian Registration Act, 1908 in respect of sale of similarly situated adjoining properties. He submitted that most of the said sale transactions are of the year 1969 i.e. just prior to the issuance of the notification under section 4 of the said Act in respect of the acquired land which was issued on 11th June 1970. He submitted that the sale instances are completely ignored by the Reference Court. He, therefore, submitted that the Appellant was entitled to the enhancement in the market value.

3. The learned A.G.P. appearing for the State has submitted that no case for interference is made out. He however pointed out that the Appellant was not entitled to interest under section 23(1-A) of the said Act in view of the settled position of law. He submitted that as the Reference Court has not granted enhancement in the market value, the Reference Court has no

jurisdiction to award statutory benefits. He submitted that this is a fit case wherein power under Order XLI Rule 33 of the Code of Civil Procedure, 1908 has to be exercised and the Award directing payment of statutory benefits to the Claimant should be set aside.

4. I have considered the submissions. The Appellant has examined only one witness Rajaram Mahadik. The Appellant is a Trust. The said witness was serving with the Appellant-Trust as an Inspector. He referred to the certified copies of Index II produced by the Appellant evidencing sale transaction in respect of the adjoining lands. In the examination-in-chief, the said witness has not stated that he had seen the location of the lands which are the subject matter of the said instances and that the lands which were the subject of the said instances were similar to the acquired land. It is true that the certified extracts of Index provided under section 57 of the Indian Registration Act, 1908 may be admissible in evidence by virtue of section 51A of the said Act of 1894. However, there is absolutely no evidence to show that the lands which are subject of those sale instances are comparable to the acquired land. That evidence is completely lacking. Therefore, no fault can be found with the view taken by the Reference Court that the Claimant has not proved the

case for enhancement.

5. In the present case, the Award under section 11 of the Land Acquisition Act has been made on 28th December 1981. In view of the settled position in law, the Appellant-Claimant was not entitled to receive interest under section 23(1-A) of the said Act. However, in so far as the solatium under section 23(2) is concerned, the Appellant was entitled to that amount inasmuch as on the date on which Act No.68 of 1984 came into force, the reference proceeding was pending before the reference Court. In this case, the State Government has not preferred any appeal or cross-objection. The learned A.G.P. has sought to invoke powers under Order XLI Rule 33 of the said Code. There cannot be any dispute that Rule 33 of Order XLI of the said Code confers powers to pass a decree in favour of the Respondent even though no cross- objection has been filed with a view to do complete justice between the parties. It is well settled position in law that the powers under Rule 33 of Order XLI of the said Code have to be exercised with care and caution.

6. In so far as the payment of benefit under section 23(1-A) of the said Act is concerned, it is a creation of the statute. The Claimant is entitled to

the said amount irrespective of the fact whether it is specifically claimed or not. There no dispute that as per the well settled position of law, the Appellant was not entitled to claim that benefit. If in this case the power under Rule 33 Order XLI of the said Code is not exercised, there will be a loss to the public exchequer. However, discretionary power under Rule 33 of Order XLI of the said Code cannot be exercised to set aside the benefit granted under section 23(2) on the ground that the Reference Court has not granted any enhancement in the market value. If in law, the Appellant was entitled to the statutory benefits, the Appellant must get it. Therefore, the reference Court rightly granted benefit under section 23(2) of the said Act. The reference Court has not granted benefit of interest under section 28 of the said Act. The said statutory benefit will have to be granted.

7. Hence the following order is passed:

i) The Appeal is partly allowed with no order as to costs.

ii) The impugned Judgment and Award dated 28th September 1988 is modified to the extent that the Appellant will not be entitled to

the benefit under section 23(1-A) of the said Act of 1894. However, in so far as the additional solatium is concerned, the Award is maintained. The Appellant will be entitled to interest under section 28 of the said Act of 1894.

iii) The Reference Court will make necessary calculation of the amount payable to the Appellant within a period of four months from the date of receipt of Writ of order.

Judge.